

§ 346.20

12 CFR Ch. III (1–1–98 Edition)

any term or condition of the pledge agreement.

(Reporting and recordkeeping requirements in paragraph (e)(6) approved by the Office of Management and Budget under control number 3064-0010)

[49 FR 49620, Dec. 21, 1984, as amended at 52 FR 34210, Sept. 10, 1987; 54 FR 14067, Apr. 7, 1989]

§ 346.20 Asset maintenance.

(a) An insured branch of a foreign bank shall maintain on a daily basis eligible assets in an amount not less than 106% of the preceding quarter's average book value of the branch's liabilities or, in the case of a newly-established branch, the estimated book value of its liabilities at the end of the first full quarter of operation, exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries. The Director of the Division of Supervision or his designee may impose a computation of total liabilities on a daily basis in those instances where it is found necessary for supervisory purposes. The Board of Directors, after consulting with the branch's primary regulator, may require that a higher ratio of eligible assets be maintained if the financial condition of the branch warrants such action. Among the factors which will be considered in requiring a higher ratio of eligible assets are the concentration of risk to any one borrower or group of related borrowers or the concentration of transfer risk to any one country, including the country in which the foreign bank's head office is located. Eligible assets shall be payable in United States dollars or in a currency freely convertible into United States dollars.

(b) In determining eligible assets for the purposes of compliance with paragraph (a) of this section, the branch shall exclude the following:

(1) Any asset due from the foreign bank's head office, other branches, agencies, offices or affiliates;

(2) Any asset classified *Value Impaired*, to the extent of the required Allocated Transfer Risk Reserves or equivalent write down, or *Loss* in the most recent state or federal examination report;

(3) Any deposit of the branch in a bank unless the bank has executed a valid waiver of offset agreement;

(4) Any asset not supported by sufficient credit information to allow a review of the asset's credit quality, as determined at the most recent state or federal examination;⁴

(5) Any asset not in the branch's actual possession unless the branch holds title to such asset and the branch maintains records sufficient to enable independent verification of the branch's ownership of the asset, as determined at the most recent state or federal examination;

(6) Any intangible asset.

(c) A foreign bank which has more than one insured branch in a state may treat all of its insured branches in the same state as one entity for purposes of compliance with paragraph (a) of this section, and shall designate one branch to be responsible for maintaining the records of the branches' compliance with this section.

⁴Whether an asset has sufficient credit information will be a function of the size of the borrower and the location within the foreign bank of the responsibility for authorizing and monitoring extensions of credit to the borrower. For large, well known companies, when credit responsibility is located in an office of the foreign bank outside the insured branch, the branch must have adequate documentation to show that the asset is of good quality and is being supervised adequately by the bank. In such cases, copies of periodic memoranda that include an analysis of the borrower's recent financial statements and a report on recent developments in the borrower's operations and borrowing relationships with the bank generally would constitute sufficient information. For other borrowers, periodic memoranda must be supplemented by information such as copies of recent financial statements, recent correspondence concerning the borrower's financial condition and repayment history, credit terms and collateral, data on any guarantors, and where necessary, the status of any corrective measures being employed.

Subsequent to the determination that an asset lacks sufficient credit information, an insured branch may not include the amount of that asset among eligible assets until the FDIC determines that sufficient documentation exists. Such a determination may be made either at the next federal examination, or upon request of the branch, by the regional director of the FDIC region in which the branch is located.

(d) The average book value of the branch's liabilities for a quarter shall be, at the branch's option, either an average of the balances as of the close of business for each day of the quarter or an average of the balances as of the close of business on each Wednesday during the quarter. Quarters end on March 31, June 30, September 30, and December 31 of any given year. For days on which the branch is closed, balances from the previous business day are to be used. Calculations of the average book value of the branch's liabilities for a quarter shall be retained by the branch until the next Federal examination.

[54 FR 14069, Apr. 7, 1989, as amended at 60 FR 31384, June 15, 1995]

§ 346.21 [Reserved]

§ 346.22 Deductions from the assessment base.

An insured branch may deduct from its assessment base deposits in the insured branch to the credit of the foreign bank or any office, branch or agency of and any wholly owned subsidiary of the foreign bank.

§§ 346.23—346.100 [Reserved]

Subpart D—Applications Seeking Approval for Insured State Branches To Conduct Activities Not Permissible for Federal Branches

§ 346.101 Applications.

(a) *Scope.* A foreign bank operating an insured state branch which desires to engage in or continue to engage in any type of activity that is not permissible for a federal branch, pursuant to the National Bank Act (12 U.S.C. 21 *et seq.*) or any other federal statute, regulation, official bulletin or circular, or order or interpretation issued in writing by the Office of the Comptroller of the Currency, or which is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction (each an impermissible activity), shall file a written application for permission to conduct such activity with the FDIC pursuant

to this section. An applicant may submit to the FDIC a copy of its application to the Board of Governors of the Federal Reserve System (Board of Governors), provided that such application contains the information described in paragraph (d) of this section.

(b) *Exceptions.* A foreign bank operating an insured state branch which would otherwise be required to submit an application pursuant to paragraph (a) of this section will not be required to submit such an application if the activity it desires to engage in or continue to engage in has been determined by the FDIC not to present a significant risk to the affected deposit insurance fund pursuant to 12 CFR Part 362, "Activities and Investments of Insured State Banks".

(c) *Agency activities.* A foreign bank operating an insured state branch which would otherwise be required to submit an application pursuant to paragraph (a) of this section will not be required to submit such an application if it desires to engage in or continue to engage in an activity conducted as agent which would be a permissible agency activity for a state-chartered bank located in the state in which the state-licensed insured branch of the foreign bank is located and is also permissible for a state-licensed branch of a foreign bank located in that state; provided, however, that the agency activity must be permissible pursuant to any other applicable federal law or regulation.

(d) *Content of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall contain the following information:

(1) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(2) An analysis of the impact of the proposed activity on the condition of the United States operations of the foreign bank in general and of the branch in particular, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;